

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of: )
Bright House Networks, LLC ) CSR 6857-E
Cox Southwest Holdings, L.P. ) CSR 6631-E, 6632-E, 6633-E, 6634-E,
6635-E & 6636-E
Mediacom Illinois LLC ) CSR 6781-E, 6782-E & 6783-E,
Mediacom Southeast LLC ) CSR 6598-E, 6734-E, 6743-E, 6796-E,
6802-E, 6807-E, 6825-E & 6889-E
Eighteen Petitions for Determination of Effective )
Competition in Thirty-Seven Local Franchise )
Areas )

MEMORANDUM OPINION AND ORDER

Adopted: September 28, 2005

Released: September 30, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers eighteen petitions which cable operators ("the "Cable Operators") have filed with the Commission pursuant to Sections 76.7, 76.905(b)(1) & (2) and 76.907 of the Commission's rules for a determination that such operators are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act") and are therefore exempt from cable rate regulation in the communities listed in Attachment A (the "Communities"). No opposition to any petition was filed. Finding that the Cable Operators are subject to effective competition in the listed Communities, we grant the petitions.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>1</sup> as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules.<sup>2</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>3</sup>

<sup>1</sup>47 C.F.R. § 76.906.

<sup>2</sup>See 47 U.S.C. § 543(1); 47 C.F.R. § 76.905.

<sup>3</sup>See 47 C.F.R. §§ 76.906 & 907.

## II. DISCUSSION

### A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.<sup>4</sup> Turning to the first prong of this test, the DBS service of DirecTV, Inc. ("DirecTV") and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>5</sup> The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.<sup>6</sup> In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.<sup>7</sup> We further find that the Cable Operators have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. The Cable Operators sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.<sup>8</sup> The Cable Operators assert that they are the

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<sup>4</sup> 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>5</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>6</sup> *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

<sup>7</sup> *See* 47 C.F.R. § 76.905(g).

<sup>8</sup> Bright House Networks Petition CSR 6857-E at 7-10; Cox Southwest Petition CSR at 6631-E at 7-9; Cox Southwest Petition CSR 6632-E at 7-9; Cox Southwest Petition CSR 6633-E at 7-9; Cox Southwest Petition CSR 6634-E at 7-9; Cox Southwest Petition CSR 6635-E at 7-9; Cox Southwest Petition CSR 6636-E at 7-9; Mediacom Illinois Petition CSR 6781-E at 6-7; Mediacom Illinois Petition CSR 6782-E at 6-7; Mediacom Illinois Petition CSR 6783-E at 6; Mediacom Southeast Petition CSR 6598-E at 6; Mediacom Southeast Petition CSR 6734-E at 6-7; Mediacom Southeast Petition CSR 6743-E at 6-7; Mediacom Southeast Petition CSR 6807-E at 6; Mediacom Southeast Petition CSR 6889-E at 6-7. Mediacom Illinois Petitions CSR 6781-E/6782-E/6783-E and Mediacom Southeast Petitions CSR 6598-E/6734-E/6743-E/6807-E/6889-E were provided on a zip code plus four basis. The remaining Bright House Networks Petition CSR 6857-E and Cox Southwest Petitions CSR 6631-E/6632-E/6633-E/6634-E/6635-E/6636-E reported DBS subscribership on a five digit zip code basis that was adjusted based upon an allocation methodology previously approved by the Commission. *See, e.g., In re Petition for Determination of Effective Competition in San Luis Obispo County, California*, 17 FCC Rcd 4617 (2002); *Fibervision, Inc. Petition for Determination of Effective Competition in Laurel, MT and Park City, MT*, 17 FCC Rcd 16313 (2002).

largest MVPD in the Communities because their subscribership exceeds the aggregate DBS subscribership for those franchise areas.<sup>9</sup> Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that the Cable Operator's have demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that the Cable Operators have submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

### B. Low Penetration Effective Competition

5. Section 623(1)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system."<sup>10</sup> Two Cable Operators listed on Attachment A (Bright House Networks CSR 6857-E and Mediacom Southeast CSRs 6734-E/6796-E/6802-E/6825-E/6889-E) provided information showing that less than 30 percent of the households within its franchise area subscribe to its cable services. Accordingly, we conclude that the Cable Operators have demonstrated the existence of low penetration effective competition under our rules.

### III. ORDERING CLAUSE

6. Accordingly, **IT IS ORDERED** that the petitions filed by Bright House Networks, LLC, Cox Southwest Holdings, L.P., Mediacom Illinois LLC, and Mediacom Southeast LLC for a determination of effective competition in the communities listed on Attachment A **ARE GRANTED**.

7. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing the Cable Operators **ARE REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>11</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

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<sup>9</sup> *Id.* In certain instances, the Cable Operator was not able to determine the largest MVPD because the DBS providers' aggregated subscriber counts were larger than the Cable Operator's subscriber count. In those instances, the Cable Operators were able to establish that the competing provider test was met because the penetration rate of both the DBS providers and the Cable Operator exceeded the 15 percent rate required by the competing provider test.

<sup>10</sup> 47 U.S.C. § 543(1)(1)(A).

<sup>11</sup> 47 C.F.R. § 0.283.

## Attachment A

## Cable Operators Subject to Competing Provider Effective Competition

## Bright House Networks, LLC: CSR 6857-E

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Bessemer	AL0172	23%	11537	2642
Birmingham	AL0125	15.9%	98782	15690
Brighton	AL0194	15.9%	1413	225
Irondale	AL0269	15.3%	4019	615
Jefferson County	AL0273 AL0268 AL0269	23.6%	43809	10329
Lipscomb	AL0192	15.9%	901	143

## Cox Southwest Holdings, L.P.: CSR 6631-E

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
City of Huntsville	TX0003	33.3%	10266	3416

## Cox Southwest Holdings, L.P.: CSR 6632-E

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
City of Jacksonville	TX0143	38.7%	4882	1891

## Cox Southwest Holdings, L.P.: CSR 6633-E

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
City of Livingston	TX0095	57.8%	2048	1184

**Cox Southwest Holdings, L.P.: CSR 6634-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
City of Mineral Wells	TX0002	26.4%	5707	1506

**Cox Southwest Holdings, L.P.: CSR 6635-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
City of Paris	TX0098	30.5%	10570	3222

**Cox Southwest Holdings, L.P.: CSR 6636-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
City of Tyler	TX0146	26%	32525	8471

**Mediacom Illinois LLC: CSR 6781-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Nauvoo	IL0692	21.8%	403	88
Pontoosuc	IL1228	24.3%	74	18
Roseville	IL1065	17.6%	438	77

**Mediacom Illinois LLC: CSR 6782-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Wyoming	IL0811	21%	629	132

**Mediacom Illinois LLC: CSR 6783-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Victoria	IL1158	17.7%	158	28

**Mediacom Southeast LLC: CSR 6598-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Waveland	MS0135	16.3%	2731	446

**Mediacom Southeast LLC: CSR 6734-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Gretna	FL0874	19.7%	503	99
Havana	FL0514	22.9%	700	160

**Mediacom Southeast LLC: CSR 6743-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Bayou La Batre	AL0356	19.4%	769	149
Citronelle	AL0216	43.4%	1318	572
Creola	AL0242	36.4%	718	261
Mount Vernon	AL0344	26.1%	333	87
Satsuma	AL0219	28.2%	2017	569

**Mediacom Southeast LLC: CSR 6807-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Huntland	TN0314	34.9%	364	127

**Mediacom Southeast LLC: CSR 6889-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Colerain	NC0689	18.5%	103	19

**Cable Operator Subject to Low Penetration Effective Competition****Bright House Networks, LLC: CSR 6857-E**

<b>Communities</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Level</b>
Hoover	25191	330	1.3%
Hueytown	6155	430	7.0%

**Mediacom Southeast LLC: CSR 6734-E**

<b>Communities</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Level</b>
Gadsden	14457	1046	7.2%

**Mediacom Southeast LLC: CSR 6796-E**

<b>Communities</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Level</b>
Hancock	16897	899	5.3%
Wiggins	4747	283	6.0%

**Mediacom Southeast LLC: CSR 6802-E**

<b>Communities</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Level</b>
Gulf	4931	774	15.7%
Port Saint Joe	1402	59	4.2%

**Mediacom Southeast LLC: CSR 6825-E**

<b>Communities</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Level</b>
Bay	59597	2074	3.5%

**Mediacom Southeast LLC: CSR 6889-E**

<b>Communities</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Level</b>
Merryhill	7743	654	8.4%
Tyrell	1537	89	5.8%

CPR = Percent DBS penetration

+ = See Cable Operator Petitions